

Statewide Stormwater Coalition

Comments on the 2nd Draft of the Phase II Small MS4 Permit

Introduction

- Statewide Stormwater Coalition
 - Over 90 local governments and organizations
 - The Coalition seeks structural reforms to create a permit drafting process that is more transparent, stakeholder-based and accounts for costs
 - Speaking today on behalf of 51 members who approved the Coalition's comment letter
- Six Focused Topics
 - Precision in permit language
 - Alignment with CWA and regulations
 - Receiving water limitations language
 - Municipal legal authority
 - Role of the Regional Boards
 - Fiscal impacts

1. Precision in Permit Language

- Permit must be drafted with precision
 - Permit will be interpreted as a contract or other legal document
 - All provisions enforceable
- Why Important?
 - Must eliminate vague language to avoid unintended consequences
 - Section E.7.b.3.(i) example
 - Section C.1 example
 - Only include provisions intended to be enforceable

2. Alignment with the CWA and Phase II Regulations

- Permits “shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers”
 - Section B discharge prohibitions
 - De minimis discharges as identified by the dischargers (40 C.F.R. 122.26(d)(2)(iv)(B)(1))
 - Section E.6
 - “into/from”
 - “prohibit and eliminate”
- Permits “shall require controls to reduce the discharge of pollutants to the maximum extent practicable . . . and such other provisions as . . . appropriate for the control of such pollutants.”
 - Section C.1 - effluent limitation
 - Section E.12 – “to the extent technically feasible”
- Phase II Regulations
 - Six minimum measures (controls) achieve reduction of pollutants to the MEP

3. Receiving Water Limitations Language (Section D)

- Browner: Strict compliance with water quality standards is not required for MS4 permits
- State Board Orders WQ 99-05 and 2001-15
 - Mandatory language “does not require strict compliance with water quality standards”
 - Compliance to be “achieved over time, through an iterative approach requiring improved BMPs.”
- NRDC v. County of LA
- Need to clarify language and State Board policy through an open and public process that includes an assessment of the cost of immediate and strict compliance with water quality standards

Receiving Water Limitations Language (cont'd)

- Permittees can not comply with provisions as written
 - Permittees do not have ability to control all discharges
 - Local governments have no control over state institutions within their boundary
- Many will be at immediate and significant risk if the language is not revised
 - Many agencies are likely to be out of compliance immediately – MS4s with known TMDL and 303(d) listings at immediate risk
- State Board has discretion on this issue and should not unduly burden municipalities with unachievable requirements

4. Municipal Authority

- Recognize Limits on Municipal Authority
 - Section E.6.a.(ii).(h) – access to private property
 - Section E.12.d.1.(ii).(d).(1).(ii) – ministerial projects
 - Section E.13.b.1.(ii).(d) – monitoring fund
 - Delete or add limiting language as follows: “to the extent allowable by applicable law....”
- Respect for Municipal Authority
 - Section E.12.j – General plan and zoning
 - Section E.8.(i) – Compelled involvement in IRWMP/Watershed Planning

5. Role of Regional Boards

- Continuation of Existing Programs
 - Section E.1.b
 - Amend to allow dischargers to request; Regional Boards to approve if requested
- Expansion of General Requirements
 - Eliminate Section E.7 discretion (CBSM)
 - Provide parameters for other discretion and guidelines on enforcement
 - If permit requires controls necessary to reduce the discharge of pollutants to the MEP, why is the discretion to expand requirements needed?

6. Fiscal Impacts

- Cost Analysis in Fact Sheet
 - Cost of individual controls
 - Benefit of individual controls
 - Outdated information
- Permit Conditions that Exceed 6 Minimum Measures
 - Implications for unfunded state mandates process (beyond MEP)

Conclusion

- Coalition appreciates progress in 2nd Draft
- Requests that the State Board make the changes set forth in Coalition's comment letter
- Willing to meet with staff to review issues outlined in comment letter